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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/205,119	12/03/1998	CHARLES A. ELDERING	8887-3004	8185

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EXPANSE NETWORKS, INC.
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EXAMINER

LONSBERRY, HUNTER B

ART UNIT PAPER NUMBER

2611

DATE MAILED: 06/08/2004

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Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/205,119

Applicant(s)

ELDERING ET AL.

Examiner

Hunter B. Lonsberry

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 22 April 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
 - (b) ☐ they raise the issue of new matter (see Note below);
 - (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
 - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See continuation below.

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☐ The a) ☐ affidavit, b) ☐ exhibit, or c) ☐ request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____.

Claim(s) objected to: _____.

Claim(s) rejected: 42,44-46,48-60 and 62-73.

Claim(s) withdrawn from consideration: _____.

8. ☐ The drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____.
10. ☐ Other: _____

Continued from above:

1) Applicant argues that there is no motivation to combine Davis, Tuzhilin and Alexander and no suggestion of relating TV viewing habits to demographics characteristics via heuristic rules (pages 10-15)

Regarding applicants argument 1, Davis discloses a profiling system, which builds a profile based on a users interactions with a webpage.

Tuzhilin discloses a system which utilizes a number heuristic rules to create a dynamic consumer profile, which tracks user interactions and traits; the system then estimates a users future needs as well as which products a user is most likely to purchase, the rules are retrieved and generated in order to determine the dynamic profile, this data is then used to determine a user's future buying habits. The rule IF Sex="Male" and Shopping_time="evening" and Day_of_week="weekday" and Purchase="Diapers" THEN Purchase="beer", Tuzhilin states that it is assumed that most of the users in the cluster to which this rule are applied are men (column 8, lines 25-26)..

Alexander discloses a viewer profiling system which monitors a users viewing habits, purchasing habits, interest in learning more about product and internet browsing, and is able to determine demographic characteristics regarding a user, such as a users marital status, number of children, political affiliations, age, and interest in buying a car or appliance; characteristics may be determined regarding a specific user, if a user is not utilizing a specific remote or PIN, or a more general "family" profile may be determined. This data is then used to determine the likelihood that a user would be interested in a particular subject, product, them movie, episode etc (column 29, lin 56-column 30, line 44), additionally EPG features may be customized, profile information may be reported to the headend for targeted advertising purposes (column 33, lines 8-column 34, line 25).

As Alexander and Davis disclose monitoring web page interactions one would find it desirable to modify Davis with Alexander's profiling capability to locate and deliver content that matches the viewers profiled interests (Alexander column 31, lines 34-61).

As both Alexander and Tuzhilin both are concerned with a user's buying trends, and utilizing some sort of predictive set of rules to predic a user's future interests and needs, it would be desirable to modify Davis's internet monitoring system to utilize Alexander's profiling system to characterize a user, and to utilize Tuzhilin's rules set to predict future user behavior to better tailor advertisements to a user.

2) Applicant argues that the user is utilizing hindsight to reject claims 42, 46, 52, 60, 66, 71, and 73. (Pages 16-20)

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In this case, Alexander discloses a viewer profiling system which monitors a users viewing habits, purchasing habits, interest in learning more about a product and internet browsing, and is able to determine demographic characteristics regarding a user, such as a users marital status, number of children, political affiliations, age, and interest in buying a car or appliance; characteristics may be determined regarding a specific user, if a user is not utilizing a specific remote or PIN, or a more general "family" profile may be determined. This data is then used to determine the likelihood that a user would be interested in a particular subject, product, them movie, episode etc (column 29, lin 56-column 30, line 44), additionally EPG features may be customized, profile information may be reported to the headend for targeted advertising purposes (column 33, lines 8-column 34, line 25). Thus Alexander associates demographic characteristics with a subscribers interactions as required by the claims.



VIVEK SRIVASTAVA
PRIMARY EXAMINER